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Supreme Court of the United States

OCTOBER TERM, 1931

No. 67

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,

Petitioner

v.

THE UNITED STATES OF AMERICA, EX REL., CHESTATEE PYRITES & CHEMICAL CORPORATION,

Respondent

APPENDIX TO BRIEF FOR RESPONDENT

By
EDGAR WATKINS,
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APPENDIX

LEGISLATIVE HISTORY

General Statement

The statutes for construction seem to us to be free from ambiguity and therefore there is no necessity for a resort to legislative history. If, however, such history should be looked to, we believe this Appendix furnishes an accurate and adequate statement thereof.

A state of war having been on the 6th day of April, 1917, declared to exist between the United States and the government of Germany, the need for war minerals in this country, most of which were imported from abroad, became immediately imperative. At the same time it became apparent that the government could not and should not rely upon the continuance of such importations. Not only were such importations largely shut off due to the activities of the German U-boats, but our ships and those of our allies which could otherwise have been used in their transportation were required to carry soldiers and supplies to France. So we were forced to produce these minerals in this country.

How best to accomplish such production was one of the vital questions that confronted the government in the early days of the war. Large sums were devoted to advertising the needs of the government in this respect and in encouraging and stimulating

immediate large-scale production of these minerals. Cabinet officers and other important agents of the Nation pleaded for such production. The question was discussed elaborately in Congress, beginning in the spring of 1918. The resulting bill was finally passed and approved October 5, 1918. This Act was entitled:

Act October 5, 1918

"An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."

The Essential Substance of the Act

The Act is printed 40 Stat. 1009, and following. In *Section* 1 thereof it is stated:

"By reason of the existence of a state of war, it is essential to the national security and defense, and to the successful prosecution of the war, and for the support and maintenance of the Army and Navy, to provide for an adequate and increased supply, to facilitate the production, and to provide for an equitable, economical, and better distribution of the following-named mineral substances and ores, minerals, intermediate metallurgical products, metals, alloys, and chemical compounds thereof, to-wit: * * * pyrites * * * as the President may, from time to time, determine to be necessary for the purposes aforesaid, and as to which there is at the time of such determination, a present or prospective inadequacy of supply. The aforesaid

substances mentioned in any such determination are hereinafter referred to as necessaries."

Section 2 authorized the President to purchase such necessaries and to enter into contracts for the production thereof. The section further makes certain provisions for the cost price, which shall be at a price not "less than the purchase or cost of production thereof."

Section 3 authorized the President to take over mines producing the named minerals, and provided:

> "The United States shall make just compensation, determined by the President, for the taking over, use, occupation or operation by the Government of any such necessaries or any such land, deposit, mine, smelter, or plant, or part thereof."

This section also provided that if the just compensation to which the owner was entitled could not be agreed upon with the President, suit therefor or for a part thereof was authorized.

Sections 4 *and* 5 relate to administrative matters not material here.

Section 6 appropriates the sum of $50,000,000 to "be used as revolving fund for carrying out the objects of this Act, and for the purpose of making all payments and disbursements, including *just compensation* under section three."

Sections 7, 8 *and* 9 refer to administrative acts and are not material here.

Section 10 provides for a determination of the operative force of the Act, which was upon the proclamation of peace by the President.

Sections 11 *and* 12 are not material to the issue here.

This Act in effect would have authorized the President or his agents to enter into whatsoever arrangements were deemed necessary for procuring an adequate supply of these war minerals. Had the war continued, the President under this Act would have been enabled fully to protect the men who answered the call of the Government to produce these minerals. However, as the Act was approved so near the date of the Armistice, it was never resorted to.

With the cessation of war, the demand for these war minerals practically ceased, and the producers were faced with immediate and heavy losses. How to give "just compensation" (Section 3, Act of Oct. 5, 1918, *supra*) to those persons who at the request of certain named agencies of the government had in effect surrendered their properties to the government, was the question then presented to Congress.

Legislative History of the Act of March 2, 1919

After hearings, and on the 23d day of December, 1918, Senator Henderson introduced a bill entitled,

Title of Bill, Senate

"A Bill to supplement an Act of Congress approved October fifth, nineteen hundred and eighteen (public numbered two hundred and twenty), and to authorize the Secretary of the Interior from the funds appropriated by said Act to determine, adjust, and pay losses sus-

tained by investments preparatory to production of war minerals mentioned in said Act."

This was called Senate 5234, and was referred to the appropriate committee.

Bills in the House

In the House on December 24th, 1918, Mr. Foster introduced an identical bill, known as H. R. 13498, and this was referred to the Committee on Mines and Mining of the House.

On December 7th, 1918, Congressman Dent introduced a bill in the House, known as H. R. 13274, the purpose of which, as expressed in the title, was, "To provide relief where formal contracts have not been made in the manner required by law." This bill purported to authorize the Secretary of War to adjust and pay claims under contracts with the government for war supplies, where in the rush and hurry of the war, the requisite formalities had not been complied with. The moral obligation of the government to reimburse those who had lost because they had complied with the demand of their country was recognized, and the House debated whether to give the administration of the relief to the Secretary of War or to a newly created commission. On January 9th, 1919, the House passed the bill substantially as introduced, leaving the matter in the hands of the Secretary of War.

After three separate disagreements between the Conference Committees of the House and Senate an agreement was reached and the statute upon which

the claim of Respondent is based was passed and reads:

Section 5 of the Act of March 2, 1919, as Passed

"Sec. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the act of Congress approved October fifth, nineteen hundred and eighteen, entitled 'An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply.'

"The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appro-

priated by the said act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however*, That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further*, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any man-

ner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

"That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

"That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

"Approved March 2, 1919."

Administration of the Act of 1919 Criticized

Respondent and others being dissatisfied, appealed to the Congress and H. J. Res. 170 was introduced

and hearings had thereon and a report of said hearings was printed as,

HEARINGS
BEFORE THE
COMMITTEE ON MINES AND MINING
House of Representatives

EXCERPTS
Sixty-sixth Congress
Second Session
on
H. J. Res. 170.
WASHINGTON
Government Printing Office
1920

"MR. HOWARD. Mr. Chairman, in order that the committee might know exactly what the Secretary did say, I will read it from a previous hearing. This is from Secretary Lane's testimony before this committee on this very particular matter upon which you gentlemen want information. It is only a couple of pages and I will read it. The hearings were held between March 25 and April 2, 1918. He said:

The Secretary of the Interior Urges Production and Aids in Financing

"When the war came on, however, it became necessary for us to find out how com-

pletely self-sufficient we were. Is the United States able to build a battleship completely for itself? Are we able to furnish all the minerals that go into a cannon, or armor plate, or a rifle, or tools? And so we have been making a more elaborate study of the resources of the United States to see how self-sufficient we could become. About a year ago I was in my office one day when Mr. Callaway, of LaGrange, Ga., whom probably some of you know, is one of the most successful business men of the South, the manager of three of the largest cotton mills, came into my office and said: "I want to get some war work to do. I am perfectly willing to come in as an office boy."

"I had recently been through the South and had made for myself a map of the mineral resources of the South, and was looking over it shortly before Mr. Callaway came in. I pointed out this map to him and said: "Here is something you can do. The Nation needs sulphuric acid; you need to develop your phosphate; why don't you develop some pyrites in the South? Here is a strip of country down through Georgia and Alabama, a territory you are familiar with, where you have grown up; why don't you see that some pyrite is developed there so that sulphuric acid can be developed right alongside of the phosphate, and so that ships that come from Spain with pyrite can be put into the business of carrying food over to the Allies and carry our own boys and munitions?"

"Callaway is a very live man, and he said: "I do not know about this thing. I never heard of the stuff, but if you say it is there I will see if I can not get it."

"That man has developed five mines since the middle of last year. He found it was necessary, in order to develop those mines, that roads should be built—to one of them 6 miles long—that a small branch railroad should be built to another. The men who owned these properties were men not familiar with matters of large finance; did not know how to go about getting out their products and getting the money for the railroad or the wagon road, and so he gave to those men his guidance and support, with the result that there has been that development, which is very promising. That is the kind of thing that can be done throughout the United States, provided you can give some kind of guaranty that the man who develops these new properties which are in competition with the materials which come from abroad where there are larger deposits, provided that the man who develops the small deposit in the United States can be assured that he will get his money out of the investment that he puts into the development of these mines.'

"MR. PRATT. Gentlemen, I want to make my statement as brief as possible. I told Mr. Callaway that we had given very careful consideration to the development of this pyrites property; that we knew what the demand for pyrites was; that we had not considered that we were justified in going into the matter of increased production to any greater extent than the investment represented by our financing contract, and the development of the property for a production of 25,000 tons per annum as our lease contract had contemplated.

"MR. LUHRING. This was all done before you talked to Mr. Callaway?

"MR. PRATT. The lease had been executed and construction work was under way.

"MR. LUHRING. The $200,000 loan had been arranged for?

"MR. PRATT. Yes, sir. Now, Mr. Callaway went into a great many matters and went over the property and noted the extent of the development work that had been done. He asked me to make a memorandum for him and stating such other things as might occur to me. Accordingly, on the 18th of June, 1917, I prepared a report for Mr. Callaway, which is in our record. It does not need to be read in full.

(The paper referred to follows:)

June 18, 1917.

CHESTATEE PYRITES MINES, LUMPKIN COUNTY, GA. MEMORANDUM FOR MR. FULLER E. CALLAWAY

Property.—900 acres in Lumpkin County, Ga., 7 miles east of Dahlonega, 20 miles northwest of Gainesville, 10 miles west of the Gainesville & Northwestern Railroad at Brookton (Hall County), 9 miles south of Cleveland (White County). The property lies on both sides of the Chestatee River, approximately 2 miles, and with riparian rights, all of the water power of the Chestatee River, a fall of approximately 45 feet on the company's property. The pyrites veins are shown by massive outcrops of "gozzan" and surface crosscuttings to be practically continuous throughout a distance of about 6,000 feet from the center of the property in southwesterly direction. No effort has been made to open the vein in northwesterly direction, al-

though surface indications and "float gozzan" in the "drift" clearly indicate its presence.

For fuller description see Bulletin No. 213, Series A, Economic Geology 24, the same being contributions to Economic Geology 1902, pages 62 and 63, also small property map hereto attached.

Original development.—By heavy outcropping of massive gozzan (in place), by "float gozzan" and by surface crosscutting, it has been shown that the vein is practically continuous in varying width approximately 6,000 feet southwest of the river, and by crosscutting has been shown to continue north of the river. Large three compartment working shaft has been sunk at angle of 54 degrees in the vein to depth of 205 feet (150 feet below the river in ore entire depth). Heavy outcrop on hilltop, 265 feet above the river, determines distance of vertical workings at this time to something over 400 feet below outcrop. Crosscutting at various levels and longitudinal workings about 500 feet all in ore have proved and shown average width of vein approximately 30 feet. Tunnel was driven into the vein about 27 feet above river level crosscutting "ore shoot" of high-grade lump ore, approximately 40 feet wide from wall to wall, 200 tons of lump ore was taken out from this tunnel, transported to Gainesville, thence to Atlanta by rail and one of the large sulphuric-acid works operated on this ore for sufficient length of time to prove its excellence for the manufacture of sulphuric acid. Recent additional underground developments consist of drift driven into the vein about 12 feet above river level across to the west wall, proving width of vein at this point about 46 feet from wall to wall, high-grade lump ore; curving to the southwest has been contin-

ued in the vein a distance, approximately, 150 feet. This heading about 200 feet northeast of the old tunnel above mentioned, and 350 feet north of the three compartment shaft, has blocked out or reasonably exposed large tonnage of high-grade lump ore available for sulphuric-acid works without treatment in concentration mill. Thorough expert investigation has been made, and all opinions are that the extent of the vein, the character and quality of the ore, are sufficient to warrant exploitation on large scale.

Recent development.—Having determined from exhaustive investigation outlined above that the extent of the vein and quality of the ore warranted further development and exploitation, Messrs. N. P. Pratt and George L. Pratt (Chestatee Pyrites & Chemical Corporation), have financed the enterprise to the extent of $250,000 without issue of bonds or other incumbrances upon either the property or improvements.

Construction and development work was begun in November, 1916, to develop the water power for generation of compressed air and electric current for the deepening of the present working shaft and driving additional drifts at lower levels; for the simultaneous upraising and sinking of main vertical working shaft at proper point to supply concentration mill and at such point as further underground working proves most advisable and on such plan as may be most suitable for the handling of the low-grade ores exposed by further workings; for driving a drift into the vein just above river adjacent to the power house, which drift will be continued as permanent drainage level and for engine and pipe lines, electric conductors, etc. Engi-

neering corps was also put into the field and completed survey made to final location for railroad connection to the Gainesville & Northwestern Railroad at Brookton.

The above work has been completed to the following extent: Dam developing approximately 1,000 horsepower is fully completed, forebay flume and penstock fully completed, foundations, draft tubes, and tail race for two pair high-speed horizontal turbines completed. One pair has already been installed to furnish approximately 400 horsepower, and will drive air compressor now being installed (capacity of 1,250 cubic feet free air per minute), and electric generator sufficient for lighting and electric energy needed for underground operations. Power house should be completed and ready for full operation to the above extent by July 1 to 15; operatives' houses have been built and others now under construction will be ready by August 1. The permanent drainage level has been driven approximately 150 feet into the vein and work is continuing 24 hours per day in this heading. Compressed air from small steam plant being utilized pending completion of the water power plant. Mine hoist for the present working shaft to be delivered by July 1; also mine cars and all other equipment necessary for full underground operations at such time as power plant is ready. Large magazine has been built and abundant supply of explosives provided and now on the ground to permit continuous operation for about 12 months. Thirteen miles of 60 pound steel rail have been purchased and are now on the ground at Gainesville ready to lay when the railroad grade is ready for them. Constructors' bids have been received for the railroad construction, promising completion of the

railroad, under bond, within 90 days after they are instructed to proceed.

The demand for lump pyrites becoming so acute for use in sulphuric acid fertilizer works in the neighborhood of Atlanta, it has been determined to push underground operations extensively in high-grade "ore shoots" to result in prompt delivery of as much tonnage as possible of this material without having to wait for the erection of concentration mill, which work will be carried on as follows:

The present drainage level having crosscut the vein exposing high grade lump ore from wall to wall about 46 feet wide shows, considered in connection with the tunnel and the 54° shaft above mentioned, high-grade ore shoot average width approximately 40 feet and extending along the vein about 400 feet. This level will be continued under the hill until sufficient "backs" are overhead, at which time it is anticipated that considerable tonnage of lump ores can be removed from this level. Simultaneously, drifts will be driven from the three compartment shaft 200 feet lower than this drainage level both to the northeast and to the southwest into or through this ore shoot of high-grade lump ore, at which time "stoping" operations will result in output of heavy tonnage of high-grade lump ore. Picking tables and ore bins are now being constructed and will be completed by August 1 to permit hand assortment of the lump ores for prompt shipment. The low-grade milling ores encountered will be deposited and dumped at convenient point for transportation to the concentration mill when same has been completed. It is anticipated that beginning August 1 as much as 150 tons per day of lump ore can be

delivered in the bins from the present openings ready for transportation.

Transportation.—Difficulties have been experienced in securing right of way for the railroad to Brookton, unless separate transportation company is incorporated to operate as common carrier. The owners have not felt that they could consistently incorporate as common carrier and run the risk incident to short-line railroad as such and are therefore now making other survey to Cleveland, on the Gainesville & Northwestern, to which point it is hoped private right of way will be secured. In the meantime, graded road has been built from the mines through the company's property and adjacent private property for a distance of about 2 miles to the Brookton-Dahlonega Road to facilitate transportation by motor truck and trailer equipment to the most available railroad station at Brookton. Large ore bins are now being built to facilitate delivery by motor truck and trailers and considerable tonnage is now ready for this means of transportation and larger regular tonnage above mentioned will be ready about August 1. Limited tonnages (about 50 tons per day) have been sold for delivery to begin August 1, and motor truck and trailer equipment has been purchased for delivery of this tonnage.

Quick deliveries and increased capacity.—The owners have not felt justified in development and exploitation of the Chestatee property beyond the extent above outlined even though the present pyrites situation would seem to warrant quick deliveries of heavier tonnages, for the following reasons:

First. Other developments in the domestic pyrites industry may bring about conditions of

competition after normal conditions have been restored, which would have disastrous effect, also resumption of heavy importations from Spain may so seriously affect the price that large output may not then be advisable notwithstanding the fact that the Chestatee property enjoys many natural advantages, as, for instance, water power, geographical position, etc., which would seem to insure continued profitable operation.

Second. Railroad transportation facilities necessary are seemingly now obtainable only on common-carrier basis and the owners are not willing to assume the risks incident thereto.

Third. The graded road already constructed by the owners must be continued and completed to Brookton to enable motor-truck deliveries of output until such time as railroad transportation is obtained. The owners do not feel justified in continuing this highway improvement without outside help and cooperation either from individuals, county, State, or Government aid.

Fourth. Supply of labor at prices which can be consistently paid is not available for the larger operations necessary for quick delivery and increased tonnage.

Proposed Government aid.—The owners are prepared to have available at the mines a minimum of 150 tons per day of lump ores, delivery to begin in August, and an equivalent amount of fines as soon thereafter as concentration mill can be erected. It is altogether probable that if additional labor can be made available that other entries can be made into the vein at other points to result in increased output perhaps to double these amounts.

If, however, this tonnage is to be made available for market to supply present urgent requirements, it will be necessary to secure Government aid or aid from other sources to the following extent:

AID OF GOVERNMENT NECESSARY

First. Working out of present highway from Chapman's store to Brookton to permit motor-truck and trailer transportation regardless of weather conditions.

Second. By exemption from conscription or by some other means render available larger supply of labor. About 150 men now at work; number should be increased to 300 on the property, exclusive of such number as may be necessary for highway improvement and railroad construction.

Third. Cooperation to secure railroad right of way.

Fourth. Cooperation of the Government with machinery and material manufacturers to secure prompt deliveries of additional machinery and materials required.

Fifth. Underwrite in some way the hazard or mining risk which now seems warranted on account of the urgent necessity of heavy tonnage of ore, but which would not seem to be justified under sound conservative business principles in normal times.

Suggestions.—It is suggested that the Government immediately take steps to aid the enterprise to the following extent:

First. Communication with machinery and material manufacturers, a list of which is hereto attached, urging prompt deliveries of machinery and materials not yet shipped.

Second. Notification of all the inhabitants in the neighborhood of the Chestatee mines and in adjacent sections where labor is available without interference with supply of labor of existing industries, that employees at the Chestatee mines and those willing to apply immediately for work will be exempted from conscription. (It is believed that this action will do more than any other one thing at this time to hasten the completion of construction work.) Laborers and carpenters are particularly needed.

Third. Some cooperation by such means as may be consistent with Government practices to secure right of way for railroad, in order to permit construction to begin immediately.

Fourth. Send such experts from the Geological Survey or Bureau of Mines or such other departments as may be deemed best to determine from personal investigation and inspection that the property and vein and the quality of ores are sufficient to warrant exploitation on large scale, and if found to be advisable render such aid as may then seem warranted.

Fifth. Send immediately Army engineers or others thoroughly familiar with rapid highway construction for determination of advisability, feasibility, and time necessary for improvement of highway to permit motor-truck transportation from mines to the present railroad station at Dawsonville. And what county, State, or [illegible] cooperation can be secured.

Respectfully submitted,

Geo. L. Pratt.

(Report 23-27.)

RESPONDENT CONSTRAINED TO BORROW MONEY

Geo. L. Pratt continuing:

"Returning to Atlanta after my conversation with Secretary Lane, I was informed by Mr. Ashcraft of the Ashcraft-Wilkinson Co., who had furnished us the $200,000, that Mr. Callaway had called on them, had shown them the blue prints and data sheets, etc., and the letter from Secretary Lane, and that Mr. Callaway had requested them—this is in the record in the shape of testimony by the various people whom I have mentioned—that he requested them to cooperate in an effort to increase our operations and get out increased tonnage.

"Accordingly, in the latter part of July, about a month after Mr. Callaway's visit, Mr. Ashcraft and his partner, Mr. Wilkinson, and four or five owners and representatives of the largest manufacturers of sulphuric acid in our section came to our mine and saw large tonnages of ore lying on the ground. Their plants were shut down, wanting it, and they could not get it from Spain. The big development in the sulphur situation had not been made, and every possible effort was made to get us to increase our operations. I still held out that the situation did not warrant it. I did not feel at my age that I was justified in jeopardizing everything that I had saved, and I was not willing to go ahead to greater extent. Finally, Mr. Ashcraft and Mr. Wilkinson seemed to get my brother to agree with them that it was the best thing to do. Later in July I very reluctantly—and the record will show—agreed to go into the thing to an enlarged extent. Accordingly, on the 14th day of August, nearly two months after Mr. Callaway had made the re-

quest, we decided to go into the thing to a greater extent and made a second financing contract with Ashcraft and Wilkinson." (Report 34.)

RESPONDENT'S MINE CONTAINED LARGE ORE DEPOSITS

"Mr. Rutledge had visited the property and, as I remember, that Mr. Julihn was the second engineer sent down. Mr. Julihn visited the property in November. He had handed to us a letter of introduction from Mr. Manning, of the Bureau of Mines, which, as I remember, recited that Mr. Julihn was making a trip through the South in an inspection of the several pyrites properties and prospects, and would call on us as one of the places that he intended to visit. He stayed about 10 days with us, and while there he made a very careful study of the property, the extent of it, the geological features, the peculiarities of the vein, etc., and made maps and sketches embodying his suggestions to our superintendent as to how we should proceed to make the maximum tonnage available in the shortest possible time. I want to state here that we followed, in so far as labor was available at that time to do so, the recommendations of Mr. Julihn in the development of the property to such an extent that up to the time of the signing of the armistice we had expended in underground development considerably over $100,000. The exact amount is in the record. Mr. Julihn wrote a preliminary report to Dr. Charles L. Parsons, Chief of the Division of Mineral Technology of the Bureau on Mines, on November 28. This preliminary report he prepared while he was at our property.

"MR. WELLING. That was 1917 or 1918?

"MR. PRATT. 1917. Now, I want to read from this report, it is short. I do not know that it is necessary to read it all but it is in the record and is available to you gentlemen. If you like, I will read the second paragraph:

" 'Arriving here as the first point of my itinerary I quickly realized that the possibilities of this mine must be much greater than those of any others I would visit and no estimation of it could be made in cursory fashion. It is an enterprise of enormous potentiality in a formative state, being attacked vigorously by capable men with adequate capital. The moderate development in the mine showed a large vein heavily and persistently mineralized. Using these showings as a tentative measure of possibilities beneath great extensions of undeveloped outcrop led to an inference of ore tonnages of such magnitude that I would not care to mention specific figures except in a careful report supported by data. The Chestatee unquestionably contains an immense tonnage of ore but it will require much skill to extract the part of it now in sight without retarding development necessary for the subsequent maintenance of production.'

"The balance of the preliminary report was chiefly mentioning the necessity for Government cooperation in securing deliveries, etc., and requests for priority service. The whole report is available if the committee would like to see it. Subsequently on December 6 he made a complete final report addressed to Dr. Charles L. Parsons on December 6, 1917, from which I quote as follows:

"'I have estimated Chestatee ore reserves as follows: 100,000 tons positive, 700,000 tons probable, 500,000 tons possible, 1,300,000 tons total. Extensions which cannot be estimated may show several times this amount.'

"Now, he goes on to discuss the situation as he found it with the suggestion as to what might be done, etc., in quite a lengthy report. I do not want to take the time to read it all but I do want to read the last paragraph:

"'Perhaps I should have reported that and hurried away.'

"He is referring to his previous statement in the report about the capacity.

"'I did not know what to do. I remembered your warning last summer to be reserved. But there was the vein with a great tonnage of pyrite, and the country needed it. The owners desired expert counsel and had paid a large fee to get it and had been ill advised.'

"He refers there to advice that we had received to begin shipments immediately of the large bodies in sight rather than proceed with development and bring larger tonnages into early production.

"THE CHAIRMAN. Was this engineer from the department?

"MR. PRATT. He was an engineer of the Bureau of Mines.

"THE CHAIRMAN. The other engineer that advised you about the shipment, was he from the department also, the one that gave you the advice that he said was ill advised?

"MR. PRATT. No, sir; that was an outside engineer that we had employed very much

earlier, in fact, before Government stimulation. He continues:

"'Of me, as an engineer of their Government, they expected much, and I answered the call and did what it was in me to do. I hope you will approve of my decision.'

"Shortly after Mr. Julihn returned to Washington the question, as I understand it, arose as to some means by which the Chestatee property might still be further developed. I want to read a few lines from the record of the hearings before the Minerals Relief Commission appointed by Secretary Lane. In connection with questions which were being asked me at the time as to whether Government promises had been made to us, Dr. Foster was asking me some questions. I had been informed by my brother of a conversation he had with Mr. Manning and I did not know whether the information given was confidential or not but it had considerable bearing on our case and I thought it was proper for it to come out in the hearings. Therefore when Dr. Foster asked if any promises or information had been given us that the Government would pay us, I had in mind bringing out that point. Dr. Foster asked the following question:

"'COMMISSIONER FOSTER. They told you of this bill which might extend it over a period of two years.

"'MR. PRATT. No, sir; not at that time. Secretary Lane, on the other hand, told me in conversation with him and Mr. Callaway here in June that there was no Government fund nor was there any authority for complying with the demands that I made in my report to Mr. Callaway that the Government should underwrite it or assist financially in the enter-

prise. It was subsequent to that that the agent, Mr. Julihn, represented to us that means were being worked out in Washington to protect such investments as we might make in the meantime.

"'THE CHAIRMAN. Did he say in what manner?

"'MR. PRATT. He said means were being worked out. I do not recall whether he said a bill was prepared or was being prepared. That was in the early part of December, 1917, but I have a distinct recollection that a bill was being discussed or that it was reasonable to suppose, from what was going on in Washington, for the protection and stimulation of such enterprises, that Congress would pass such an act similar to the other war measures they had passed for the protection and stimulation of such enterprise. I want to state here—but may I ask Mr. N. P. Pratt a question first?

"'THE CHAIRMAN. Certainly.

"'MR. PRATT. Would I be violating any confidence to repeat information you obtained from Mr. Manning as to a meeting at his house, particularly in regard to the Chestatee property?

"'MR. N. P. PRATT. I think you would.

"'MR. PRATT. Then I shall have to refrain.'

"Subsequent to the hearing before the commission Mr. Manning repeated the same statement to me in the presence of Mr. Edgar Watkins and Mr. Hall Wilkinson, and I therefore think I am at liberty to state to this committee what the statement was. Mr. Manning said that after Mr. Julihn returned he invited Secretary

Lane and two or three other gentlemen connected with the chemical industry, particularly, if I remember, a Mr. Nichols of the General Chemical Co., large manufacturers of sulphuric acid, to his house one evening, the object of the meeting being to discuss the matter of the Chestatee property and determine whether any funds were available or anything could be done whereby that property could be still largely developed to produce the tonnage needed. It appeared that there was no authority and no funds and therefore it was concluded that the best thing to do was to prepare and introduce in Congress a bill of some description to take care of the Chestatee property and other similar enterprises, Mr. Manning stating to me that therefore the Chestatee situation was largely responsible for the war minerals bill which was subsequently passed to take care of such enterprises. I did not feel that I could give such confidential information as this before the commission but Dr. Manning speaking freely of it afterwards, I feel now that I am at liberty to do so. When (before) the armistice was signed the war minerals bill which I have mentioned was introduced in the House, and if you gentlemen will remember, it was passed rather promptly. It went to the Senate and was amended and lingered for many months and was finally passed, I think on October 2, (5) 1918." (Report 35-38.)

After those hearings were completed, and on March 25, 1920, Mr. Garland, from the Committee on Mines and Mining, submitted to the Congress the report on the Amendment to the War Minerals Act. This report criticised severely the former Committee for its illiberal treatment of claimants, and

Findings of Committee

"The Committee is of the opinion that the Commission erred in its interpretation of the legislative intent, its interpretation and application of the provisions of the Act and the application of the provisions of the law to the facts."

The report then copied portions of the Act of March 2, 1919 and said:

"The language of the act as above quoted is clear, and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out and a 'just and equitable' settlement can be had of every legitimate claim. For the correct rule of interpretation and application of such a statute see *United States v. Dixon* (15 *Peters*), *United States v. Union Pacific Railroad Co.* (91 *U. S.*), *United States v. State of New York* (160 *U. S.*), *Smith v. Townsend* (140 *U. S.*), *District of Columbia v. Washington Market Co.* (108 *U. S.*), *McClure v. United States* (115 *U. S.*), *Monongahela Navigation Co. v. United States* (148 *U. S.*), *Stewart v. Kahn* (78 *U. S.*). For the reasons above stated the committee has not thought it necessary to amend the original act."

The wording given by the committee of the House not being heeded by the Secretary of the Interior, and [illegible] continuing its narrow construction of the law, Congress again took the matter under consideration and passed an Act approved November 23, 1921, as follows:

Act of November 23, 1921

(Public—No. 99—67th Congress)

(S. 843)

"AN ACT to amend section 5 of the act approved March 2, 1919, entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes.'

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 5 of the act approved March 2, 1919, entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' be, and the same is hereby, amended as follows:

"Add to the first paragraph of section 5 the following proviso: '*Provided*, That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation, or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation of said act.

"'If in claims passed upon under said act awards have been denied or made on rulings contrary to the provisions of this amendment or

through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts.'

"Approved November 23, 1921."

Suits in Court

After the passage of the Act of November 23, 1921, relator, and others claiming losses because of the purchase of property, believing that the Congress had indicated an intention for more liberal terms, again appealed for an allowance to the Secretary of the Interior. Later this was denied and in order to test the question, Respondent in 1923 filed in the Supreme Court of the District a petition for a writ of mandamus. That Court held that the writ should issue and said:

OPINION OF THE SUPREME COURT OF THE DISTRICT

"Hearing on demurrer to respondent's answer to petition for mandamus.

"The petition prays:

"That a writ of mandamus may be issued directing respondent, Hubert Work, Secretary of the Interior, to take jurisdiction of the claim of the relator for expenditures made and obligations for interest incurred in good faith, as hereinbefore set forth, and to allow such sum as may be just and equitable, and to adjust and pay relator's net losses, consisting of interest, thus arising in preparing to produce said ores at the requests and demand of the Department of the Interior, and to ascertain the amount thereof and to make award therefor.'

"The answer of the respondent avers that the Secretary of the Interior:

" 'On September 29, 1922, held that allowance of interest was not warranted, under the act, and suggested that if Congress intended to include expenditures for interest on borrowed capital, as suggested by counsel, claimant was not precluded from relief by Congress direct.'

"The demurrer to this answer raises practically a single question of law, which is stated in point two of the demurrer as follows:

" 'The rulings of Secretary Fall and the respondent that the items of interest are no part of the amount of the losses which are justly and equitably due from the United States to the relator under the provisions of the Acts of Congress of March 2, 1919, and November 23, 1921, are plainly erroneous, and amount to a refusal to take jurisdiction of petitioner's claim for interest or to exercise relative thereto any discretion under the statute, and are a nullification of the plain intention of Congress.'

"In the court's opinion the question, in principle, has been settled by rulings of the appellate tribunals, controlling upon this court, and which require that the demurrer be sustained:

"*Secretary of the Interior v. U. S. ex. rel. Logan Rives, No.* 4020, ...*App. D. C.*...., decided January 7, 1924.

"*Seaboard Air Line Railway Co., et al. v. U. S., No.* 407, Oct. term, 1922, U. S. Supreme Court; decided March 5, 1923.

"U. S. v. State of N. Y., 160 U. S. 598.

"Demurrer sustained.

"F. L. Siddons, Justice.

"January 8, 1924."

(Record former appeal of this case in this court.)

While this decision stood, and on February 21, 1924, but little more than a month after the decision, the Secretary of the Interior sent a communication to the Chairman of the appropriate Committees of the House and Senate with reference to pending legislation. In this communication the Secretary discussed the decision of the Supreme Court of the District of Columbia in another case, the Rives case, and also discussed the Chestatee Pyrites & Chemical Company case, wherein was involved expenditures made for the use of borrowed money. The Secretary then proceeded to show that of the $8,500,000 originally appropriated and allowed for claims that would be awarded for items other than the purchase of property and interest on borrowed money, there would remain only the sum of $389,337.38, and the Secretary said:

Letter from Secretary of Interior

"Experience has shown that about 30 per cent of the total amount of all the claims filed has been found to be the actual net losses sustained and payable under the War Minerals Act, and if this approximate per cent shall obtain in the settlement of the remaining 200 claims, aggregating $[illegible]76.36, and if all the 248 claims in which no motion for rehearing has yet been filed, involving $1,906,061.57, should be resur-

received (but attention is again called to the fact that $9,062,867.50 claimed for losses on purchase of property, $206,320.00 claimed for losses for mineral rights purchased, and $20.00 claimed for interest paid on borrowed [illegible] of these items of $3,722,788.54 are not [illegible] in the aggregate of $4,495,267.50 upon which the calculation of 90 per cent is made), there will remain of the appropriation $999,387.50 to meet:

(a) $5,062,867.50 claimed for losses on purchase of property;

(b) $206,320.00 for interest paid on borrowed capital;

(c) $453,608.54 for purchase of mineral rights;

(d) Costs of administration;

(e) The probability or possibility of other items not allowed in the past being brought into the problems for adjustment, liquidation, and settlement under the act by litigation just as property losses and interest losses have been brought in. For illustration, if the manufacturers of ferro-manganese should enter mandamus proceedings, regardless of the opinion of the Attorney General, and the courts should hold that such losses are legitimate items for repayment, then claims involving more than half a million dollars, which in these figures have been disregarded, would have to be included with those entitled to consideration and adjustment.

"And if none of the 248 claims in which no motion for rehearing has been made should be revived, there would remain of the appropria-

tion to meet the $3,722,796.84 claimed for purchase of property, mining rights, and interest, $961,746.85, making no allowance for cost of administration."

The Secretary concluded his statement by saying:

"This communication is being sent to the Chairmen of the Appropriation Committees of the Senate and House and to the Chairmen of the Mines and Mining Committees of both branches of Congress.

"Will you not confer and give me a reply at your earliest convenience?

"Very truly yours,

(Signed) "HUBERT WORK."

Act of June 7, 1924, and Its Purpose

The Supreme Court of the District of Columbia and the Court of Appeals of the District having decided that interest paid and contracted to be paid was an allowable item, the Secretary of the Interior, Mr. Work, having notified Congress that the appropriation was inadequate if such item and the item for the purchase of property were allowed, the Congress, on June 7, 1924, struck the limitation of $8,500,000 from the Act of 1919 and left in force the original appropriation of $50,000,000.

The Act reads:

"(Public—No. 249—68th Congress) (S. 2797)

"An act to authorize the payment of claims under the provisions of the so-called war minerals relief act.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called war minerals act entitled 'An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended, the limitation in said act on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed.

"Approved June 7, 1924."

While it is true that this Court held in *Work v. Chestatee Corp.*, 267 *U. S.* 185, decided May 2, 1925, that the Supreme Court of the District of Columbia and the Court of Appeals of the District of Columbia had no jurisdiction and therefore reversed such courts, the fact that Congress, with a knowledge that if the decisions of the District Courts stood more money would need to be appropriated, made such an additional appropriation shows that Congress acquiesced in the decisions of the Supreme Court of the District of Columbia and of the Court of Appeals.

The Secretary of the Interior must have regarded the matter in a similar light, for he wrote to the Attorney General for guidance thereon. The Attorney General wrote as follows:

"22113 (Copy—M)

Respectfully referred to the
DEPARTMENT OF THE INTERIOR
for information and guidance.
Chief Clerk.
Department of Justice
Washington
March 23, 1928.

"Sir: I have the honor to acknowledge the receipt of your letters of December 9, 1927, February 25, 1928, and March 9, 1928, in which you request my opinion on the following questions arising in the administration of Section 5 of the Act of March 2, 1919, c. 94, 40 Stat. 1272, 1274, commonly known as the War Minerals Relief Statute:

"'*First.* Are you authorized to adjust, liquidate and pay net losses sustained in the purchase of real estate?

"'*Second.* Are you authorized to adjust, liquidate and pay net losses arising by reason of interest paid, or payable under obligations to pay, on money borrowed for use by operators in connection with operations under the law?

"In your letter of March 9, 1928, you state that claims of such character have been filed with you for adjustment, allowance and settlement under the Act; that in your administration of the Act you have held that claims of such character are not within the purview of

the statute and for that purpose have declined to consider them with a view to an adjustment, that some of the claimants and members of Congress who are giving consideration to the passage of legislation having for its purpose the enlargement of the scope of those statutes to embrace such claims, have urgently appealed before you urging that the construction of the law which has heretofore been followed is erroneous, and that if correctly interpreted claims of the character mentioned should be reopened and adjusted without further legislation; that you have refused upon their application to recede from the construction adopted or to reconsider such cases with a view to adjustment of losses arising from the classes of claims covered by the questions submitted to me, and you now desire my opinion on the two questions of law.

"Section 5 of the Act provides:

"'That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, * * * by reason of producing or preparing to produce, either manganese, * * * or tungsten in compliance with the request or demand of the Department of the Interior, * * * to supply the urgent needs of the Nation in the prosecution of the war; * * *

"'The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided;

"'* * * *And provided further*, That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder

and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further*, That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith *for or upon property* which contained either manganese, * * * or tungsten in sufficient quantities to be of commercial importance: *And provided further*, That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese * * * or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, * * * from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded * * *.

* * * * *

"That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States:

Provided further, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government in the manner aforesaid.'".

(We here omit the portion of this opinion which relates to Docket 66 in this court.)

"The Supreme Court has held that the Secretary's construction of the Act in both respects was within the discretion permitted by the statute. *Work v. Rives*, 267 *U. S.* 175; *Work v. Chestatee Pyrites & Chemical Corporation*, 267 *U. S.* 185.

"The history of the administration of the Act contained in the papers submitted with your letters shows that all claims under consideration by you were filed within 90 days after the passage of the Act; that your predecessors in office so construed the Act as to reject both classes of claims, and that that construction has been consistently maintained by you and that all claims filed within the statutory period have been acted upon in accordance with this construction. It further appears that the questions are presented at this time under application to reopen cases thus disposed of. It also appears that the arguments now advanced were then considered and the construction contended for by the claimants rejected.

"Prior to the amendment of November 23, 1921, c. 137, 42 Stat. 322, and during the con-

sideration of the Amendatory Act, Congress was, under a resolution of the Senate of January 19, 1921, advised of the construction of the law adopted and followed by your predecessors. Thereafter the two amendatory acts were passed, neither of which contains language which upon any reasonable theory can be held to overrule or modify the meaning of the original act as thus construed. Of the amendment of November 23, 1921, the Supreme Court has said, 267 U. S. 180:

> "'This amendment was brought about on the recommendation of the Secretary of the Interior, because he had felt obliged under Section 5 as it was to reject some 600 claims for failure within the time limit to show a direct personal request or demand upon the claimant by the government authorities named in the Act and a response thereto by the claimant and because the Comptroller had refused to pay any changed award of the Secretary made after a rehearing or to correct miscalculation.'

"The amendment of June 7, 1924, c. 327, 43 Stat. 634, merely removed the limitation imposed by the Act on the amount to be disbursed in payment of claims. Thus, though Congress has twice amended this section of the Act by liberalizing its provisions in favor of claimants, nevertheless it has not seen fit to amend it so as to make it clearly include claims for losses of the kind covered by your question, though the Departmental construction rejecting such claims was distinctly brought to its attention.

"Under such circumstances and *irrespective of the reasons upon which the construction first adopted and consistently adhered to was based, or of what my own opinion might be if it were a*

case of first impression, and passing over the traditionally grave questions of propriety and power which always arise when the head of an executive department undertakes to review and overrule decisions deliberately made by one of his predecessors (compare 2 Ops. A. G. 8; 18 Ops. 33, 387; 15 Ops. 208), I think it must be held that Congress has by acquiescence sanctioned and adopted your construction as a correct interpretation of its intent. I agree fully with the conclusion reached by the Solicitor of your Department that 'you would not be justified, without further legislation authorizing the inclusion of the items referred to, in considering either of them as a proper basis for an award.'

Respectfully,

(Sgd.) JNO. G. SARGENT,
Attorney General."

The Honorable,
The Secretary of the Interior.

It may fairly be implied from the language above, which we here emphasize, that if the learned Attorney General had followed his "own opinion"; or if the grave question of "propriety and power" of one Secretary to reverse his predecessor had not existed, his conclusion would have been different. Certainly the full and accurate legislative history was not considered. (See opinion of Assistant Secretary Edwards. Post. 51.)

Petitioner Agreed that Legislation Authorizing Suits was Proper

Hearings were had before the passage of the Act of February 13, 1929, the relevant parts of which we insert.

EXCERPTS FROM HEARINGS

before the

COMMITTEE ON MINES AND MINING HOUSE OF REPRESENTATIVES

Seventieth Congress

Second Session

on

H. R. 15861.

Wednesday, January 23, 1929.

AMENDING THE WAR MINERALS ACT

House of Representatives

Committee on Mines and Mining.

Wednesday, January 23, 1929.

The committee met at 10:30 o'clock A. M., the Hon. John M. Robsion (chairman) presiding.

THE CHAIRMAN. The committee will come to order. This hearing is directed to H. R. 15861, introduced by Mr. Vinson, of Georgia (Report, p. 1).

(The bill was then copied.)

The Act later passed and approved February 13, 1929, was read and copied in the report.

STATEMENT OF EDWARD C. FINNEY, FIRST ASSISTANT SECRETARY OF THE INTERIOR

* * *

MR. FINNEY. The policy of the department with respect to this, as to all other cases received in the Department of the Interior is this, that the decision of the Secretary of the Interior on the facts should be final. Where the decision of the Secretary involves a construction of law, it is our policy, and the attitude of the Secretary of the Interior, Assistant Secretary Edwards and myself, and Mr. Briar, too, that we have not the slightest objection in the world to that question of law being carried into the courts and determined by the courts. After such determination, of course, it becomes our duty to carry out the law as construed by the courts, so answering specifically your questions, we prepared a proposed report to the committee expressing that view.

This bill proposes to permit questions of law arising out of the war minerals legislation, and which are in dispute, to be carried into the courts for determination, and our proposed report was to the effect that we favored it. (Report 3.)

* * *

THE CHAIRMAN. How much? Suppose the courts should hold that interest and the purchase of property came within the Act, how much, roughly, would that involve?

MR. FINNEY. It would only be an estimate. As you people know, there were 1,268 claims filed. Of course some of these claims have been adjusted, and

I assume there is no further dispute on those. Some of the claims have been disallowed. Not all of the claims, of course, involve interest or the *purchase* of property. Some of them may involve some other questions of law. We made a rough estimate some time ago that interest and purchase of property, if allowed, might involve between two and three millions of dollars. That was just an estimate. (Report 8.)

* * *

MR. VINSON. It is a fact, is it not, that the Department of the Interior looks with favor upon the enactment of legislation of this character, that would give the claimants a right to have the legal question determined by the courts?

MR. FINNEY. That was our attitude before we received the communication from the Bureau of the Budget. After having received that communication, we have to bow to it, and the matter is now up to Congress.

MR. VINSON. Then the Department of the Interior would like, would it not, to see Congress submit the question of law, and nothing but the question of law, to the courts for determination, so that the Department of the Interior can conclude from that decision whether or not they have administered the law in accordance with what the law is?

MR. FINNEY. As I stated a moment ago, that is our general attitude on questions of law. We would be very glad to have this or any other questions of law arising in our adjudication of cases, settled by the courts of competent jurisdiction.

MR. VINSON. As Assistant Secretary of the Interior, your viewpoint, as that official, is favorable to the enactment of this legislation and to the purport of this bill?

MR. FINNEY. Yes.

THE CHAIRMAN. It may be put this way; that the Department of the Interior is not opposed.

MR. VINSON. Yes.

THE CHAIRMAN. I mean, they do not invite litigation. I don't think any department should be put in the attitude that they invite litigation.

MR. FINNEY. That is a very good suggestion.

MR. VINSON. And I will adopt it. The Department of the Interior, then, is not opposed to the enactment of this measure?

MR. FINNEY. No. (Report 4.)

* * *

MR. FINNEY. Let me put it in another way. The courts, as I understand it, did not go into the merits; they passed on the technical question as to whether the courts of the District of Columbia, if you please, had the right to review the decisions of the Secretary of the Interior.

THE CHAIRMAN. And right there we find ourselves, in this particular instance, in a little different situation than we generally find, because there is an express provision of the Act keeping folks from going to the courts, forbidding them from going to court. In nearly every other instance they have that right to go to court.

MR. FINNEY. Yes. As I said, Mr. Chairman, in most other cases they have a method of getting in, either through an injunction or request for mandamus. (Report 6.)

* * *

MR. FINNEY. In this way: This bill, as I understand, provides that the decision of the Secretary of the Interior on facts shall still be the final conclusion.

MR. VINSON. And it is not enlarged.

MR. FINNEY. But in any question of law which has arisen or may arise in these cases, whether it shall be one or a hundred of them, the claimants shall have the right to institute a proceeding in the court to get a judicial interpretation of that particular question.

THE CHAIRMAN. Merely to get a construction on the law, and after that is had, if it is adverse to the present ruling of the Secretary of the Interior, then the cases will be adjudicated with that view of the law. (Report 6.)

* * *

MR. MANLOVE. I just want to give a concrete case. One of my constituents expended $15,000 for land, which is absolutely worthless other than for the purpose of mining and producing manganese ore. He put nine hundred and some dollars in equipment. The representatives of the Government allowed him the $900, but they refused to allow him anything on account of the real claim he had, the $15,000 which he had invested in the land. That man wouldn't have the opportunity, under this decision, because prob-

ably the question of law does not enter into it, to have his claim reviewed, as to whether or not he should be repaid the $15,000 for the land.

MR. FINNEY. If I understand your statement, that is a question involving the purchase of property, which is one of the questions we have decided adversely to the claimants. We have said, in substance, 'You still have that property, and we are not authorized, under this law, as we construe it, to reimburse what you have paid.' The claimants say that is wrong. They say, 'We bought this property for what it was worth for manganese or some other mineral. After the war it didn't pay to mine the property and it was of no use and it was a loss.' (Report 7.)

* * *

THE CHAIRMAN. As I understand this, I don't see the use of more than one case going through the courts, because you are merely going to construe the law. Then it will be up to the department to adjudicate the cases according to the law laid down by the courts.

MR. GREENWOOD. Probably they would take the strongest case, go to the court and get an adjudication of that.

THE CHAIRMAN. You don't need even the strongest case. The question of facts is not going to enter into this. They are going to read the law, and perhaps read the proceedings had in Congress, to know what was the intent and purpose and scope of that act as provided by the Congress. They will then merely construe it.

MR. GREENWOOD. But every law suit is based upon . . .

THE CHAIRMAN. You are assuming that the court is going into the facts. I don't understand that to be the purpose of this bill.

MR. VINSON. It doesn't permit the court to consider the facts at all. It merely construes the law.

THE CHAIRMAN. And that is the thought in everybody's mind about it. The Department of the Interior has said it does not embrace *interest* or *capital cost*, cost for the *purchase of property*.

MR. VINSON. Interest and capital invested.

THE CHAIRMAN. Capital invested in the purchase of property, or interest on borrowed capital. Now, it will go to the courts for a decision on those two questions.

MR. VINSON. As a matter of law.

THE CHAIRMAN. As a matter of law. Not on anybody's case, or anybody's facts. (Report 9.)

* * *

MR. FINNEY. Let me explain a little further. Also let me preface that, Mr. Chairman, by saying that as I understand this bill, it is broader than you have outlined. You have touched upon two questions only, the purchase of property, the capital investment, and interest. This bill would also permit other questions of law to be carried into the courts. There may be some cases that involve some other question of law beside those two. Now, as to your question. In the case to which you refer, and I don't know which case it is—

MR. MANLOVE. We will just use it as a hypothetical case for the purpose of illustration.

MR. FINNEY. That man expended $15,000, which he said was expended in buying a piece of ground which is now worthless, and which he intended to use as a mine?

MR. MANLOVE. Yes.

MR. FINNEY. After the war he says the land became absolutely worthless, and it resulted in a loss to him.

MR. MANLOVE. That will be admitted.

MR. FINNEY. A loss of the $15,000 invested. This bill would permit him, or one in a like situation, to go into court and determine whether the Secretary of the Interior is right when he construes the law to say that kind of a claim is not payable under the War Minerals Act. If the court said that it was payable, that a capital investment of that amount was repayable under the War Minerals Act, then the Secretary of the Interior would be set right on the law, and he would have to carry it out and administer it. Then he goes back to the facts in that man's case. Did he pay $15,000, or did he pay $13,000? Is the land worth today $5,000, or is it worth nothing? (Report 9, 10.)

* * *

STATEMENT OF JOHN H. EDWARDS, ASSISTANT SECRETARY OF THE INTERIOR. (Report 10)

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MR. EDWARDS. The Interior Department is willing at all times for all questions of law to be determined by the courts. If the Department of the Interior has misconstrued an Act, the department is anxious that the proper construction be placed upon it. Of course, there are always differences of opinion as to what is the proper construction of an Act. Those differences are never settled until some court settles them. That is the attitude of the department on this proposed bill, and all other laws, and I may say that is borne out in the administration of the War Minerals Act by the frequent requests made for a construction of the Act by the Solicitor of the Interior Department on the several questions submitted to the Attorney General, and we always, in the administration of an Act, follow the legal advisers.

MR. HARE. I gather, then, from your statement, Judge, that the department has not only no objection to this legislation, but in order that the situation might be clarified the department would welcome such legislation to interpret these Acts with reference to this mineral Act?

MR. EDWARDS. Your view is my view exactly. The Congress said by this Act that the Secretary of the Interior was the sole and exclusive judge of the law and the facts. I mean the present law. Now, if the Department of the Interior has misconstrued the

present law, then we have denied to claimants that which they are rightfully entitled to have under a proper construction. (Report 11.)

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MR. SPROUL. But the point I am asking about is this: Hasn't there been dissatisfaction on the part of the claimants over the amount of money determined to have been their losses, independent of questions of law?

MR. EDWARDS. There has been dissatisfaction, I think, however, not so pronounced, over the settlement on the facts. There always will be. A claimant says, "I am entitled to $100,000." The department goes into the facts and says, "No, you are entitled to $50,000." Of course, he is dissatisfied, but I think in the vast majority of cases the claimants have recognized the fact that they have been fairly treated on the facts.

MR. SPROUL. What per cent of the claims contain these law controversies?

MR, EDWARDS. All claims that contain an item of *loss on property*, all claims that include the *item of interest*. (Report 12.)

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MR. EDWARDS. Of course, the War Minerals Act goes back to the spring of 1919, and that was before I was connected with the department, but the Attorney General has passed on a great number of these questions, and I think perhaps all of the major questions, except the loss of property and interest, and he did pass upon that, in a way. I think he did not go into the merits of it, however.

MR. SPROUL. Did he confirm your attitude?

MR. EDWARDS. Yes; in a decision that did not go into the merits of it. That was very late. In fact, the administration was virtually closed when that question was submitted to the Attorney General, and it was submitted after a conference of Senators and Representatives with the Secretary of the Interior. (Report 13.)

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MR. MANLOVE. Whether any one of the three of you would have any feeling whatever upon the question of the courts passing upon your decision in the matter.

MR. EDWARDS. Absolutely not. We are perfectly willing. In fact, if you would ask me my preference in the matter, I would state to you that I would prefer to have the opinion of the courts. Then I would know that I had not, through some interpretation placed upon it by me or followed by me, done anybody an injustice.

MR. MANLOVE. And if you have, you would be anxious and willing to have the matter properly adjudicated?

MR. EDWARDS. Absolutely.

MR. VINSON. And the opinion of the court would be in final settlement of this matter for all time to come?

MR. EDWARDS. There is no question about it, because it would remove from the realm of controversy and doubt that question. The Interior Depart-

ment as well as the claimants would have to accept that as a finality. (Report 14.)

Act of February 13, 1929

This Court having decided that the Secretary of the Interior had a discretion as to questions of law that could not be controlled by the courts, the Congress again evidenced its desire to see payment made to claimants, and on February 13, 1929, there was approved an Act taking from the Secretary his discretion as to questions of law.

The Act reads:

"(Public—No. 728—70th Congress) (S. 1347)

"An Act to amend an Act entitled 'An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes,' approved March 2, 1919, as amended.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Act (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

"Sec. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

"Sec. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

"Sec. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

"Approved, February 13, 1929."

The Congress in Effect Approves Respondent's Claim

If an answer were needed to the suggestion of Attorney General Sargent that "Congress has by acquiescence sanctioned and adopted your (the Secretary's) construction as a correct interpretation of its intent," this Act furnishes it. For by this Act,

Congress unmistakably repudiates the action of the Secretary on all questions of law. If Congress had been willing to sanction and adopt the construction theretofore placed by the Secretary, it would have done nothing. There would have been no occasion to act.

The Committee on Mines and Mining said:

> "The language of the Act * * * is clear and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out. * * * For the reasons above stated the committee has not thought it necessary to amend the original Act." (Ante 28.)

Our conclusion is inevitable, particularly when we consider the question above and the situation as presented to Congress at that time.

After the War Minerals Act was passed in 1919, and the Commission appointed by the Secretary began to administer it, it early became apparent that there was a sharp dispute under the law as to whether losses suffered for interest paid on borrowed money and obligations incurred were reimbursable under the Act. In 1921 when Congress acted to extend the relief to others than those personally solicited, this question had not yet been presented either to the Congress or to the courts, and there was no reason for Congress to act. By 1924, however, both the Supreme Court and the Court of Appeals of the District of Columbia had decided the question in favor of this claimant. Congress did not then act in any way so as to disapprove of such result; in fact,

it impliedly approved it by voting to remove the limitation on the appropriation available to meet such claims. This was the Act of 1924. Then this court decided in May, 1925, that under the law as it then stood the courts could not review the decisions of the Secretary upon either questions of law or questions of fact. The result of this decision was to deny relief to such claimants, although the line of reasoning announced by the highest court which had attempted to pass upon the merits of the question was favorable to such claimants in every respect.

It was then for the first time that Congress was under compulsion to act if it wished to preserve the relief rights of these claimants. Up to this time (1925) Congress had relied upon the courts to construe the law in harmony with the intent of Congress, and the lower courts had done so. Then in 1925 this court pointed out that the courts lacked jurisdiction to decide these questions in any way. The effect was to leave the decision of the Secretary as final, regardless of whether it was right or wrong. In this situation, if the conclusion of the Secretary had been satisfactory to Congress, it could have remained silent. But if the practical result reached was unsatisfactory—if its will had been thwarted—one would expect it to act.

Congress acted. It passed this Act of 1929. By doing so, it said, in effect, "Mr. Secretary, you have not construed our Act correctly on these two points of law. Your decisions on issues of fact are satisfactory, and we will not change the substantive wording of the original Act lest it unsettle the whole matter of relief and invite the filing now of stale claims.

When these legal questions were thought to be before the courts, they read our intent correctly. Therefore, we are going to take the decision of these legal questions out of your hands and leave it to the courts, which have already indicated a correct interpretation of our intent."

These facts surrounding the passage of this Act of 1929 show it clearly to have been the intent of Congress to have the courts and not the Secretary pass finally on these disputed questions of law.

But if we leave such outside matters and look into what was said on the floor of Congress when this Act of 1929 was under discussion, our construction is even more definitely confirmed.

The Act of February 13, 1929, was originally introduced in the Senate as S. 1347. This bill provided that the Court of Claims should be the tribunal to pass on these questions of law. In the House, at the same time, had been introduced a bill, H. R. 15861, which had practically the same provisions as the Senate bill, but it provided that the claimants could go to the regular courts. When the Senate bill reached the House, it was referred to the Committee on Mines and Mining, which reported it out after striking out all after the enacting clause and inserting, as the body of the bill, H. R. 15861.

Report of the House Committee

Mr. Robsion, Chairman of the Committee, in reporting the bill, said (Congr. Rec., Feb. 4, 1929, p. 2800):

"In 1919 Congress passed what is known as the war minerals act. It set aside $8,500,000 to take care of losses in the production of certain minerals during the war. This act gave the Secretary of the Interior entire jurisdiction in hearing and determining both questions of law and questions of fact. Some 1,200 claims have been filed and these have been adjudicated. There remains unexpended nearly $1,000,000.

"There has been much complaint on the part of the various claimants to the effect that the Secretary of the Interior has not properly construed the law. There has been very little objection on the questions of fact.

"All this bill does is simply to give the claimants the right to go to the district court, the court of appeals, and the Supreme Court on the questions of law alone. The action of the Secretary of the Interior under this bill, on questions of fact, is still final and conclusive.

"So it is up to the House to say whether or not we want to give these claimants the right to go to the courts to have a construction of the law. If the courts construe the law as the Secretary of the Interior construed it, there will be no expenditure; but on the other hand, if the contention as to the law in two important particulars is overturned, it may cost the Government as much as $3,000,000, according to the report of the Secretary of the Interior. We already have something like a million dollars."

A little later, in response to a question as to whether this Act did not enlarge the number of claimants, Mr. Wingo said:

"As a matter of fact, all this bill does is to authorize the court to determine a disputed

question of law that has arisen in the department, and about which the department itself is in doubt as to what the law is."

Followed by Mr. Robsion again:

"This does not enlarge the act. It does not permit any new claims to be filed. It is merely an authorization for the courts to construe the act, and the Secretary of the Interior will administer it in accordance with the construction by the courts."

Then the following colloquy took place:

"MR. ROBSION of Kentucky. Mr. Speaker, the Secretary of the Interior has ruled that this act does not provide for the repayment of money expended for the purchase of property to produce these minerals. It does not provide for the payment of interest where men borrowed money to go into these mining ventures. The only question now that this bill will open up when the law is construed is: Does the law authorize repayment for the purchase of property or the payment of interest that was borrowed to go into these mining operations?

"MR. DYER. Suppose the law does state that, suppose the Supreme Court decided that way, then, of course, if the claims are opened up and allowed, some of these dubious or large claims referred to will, if allowed, necessitate the appropriation of more money than has been appropriated by the Congress.

"MR. ROBSION of Kentucky. According to the report of the Secretary of the Interior, if these two items are allowed under the law, it will not mean more than $3,000,000, and there is today about $1,000,000 of the unexpended appropriation that would be applied. The Secretary

says it might cost not more than a million and a half.

"MR. UNDERHILL. Mr. Speaker, will the gentleman yield?

"MR. ROBSION of Kentucky. Yes.

"MR. UNDERHILL. Is it not a fact that the decision of the Secretary of the Interior is based largely upon the assumption that these ventures were largely speculative, and that he did not believe that the Government should attempt to repay these men for money expended or chanced during the war, for the sake of profits?

"MR. ROBSION of Kentucky. That is not his view. He just held that the law does not permit the refund of money paid to buy mineral lands out of which was to be mined these minerals, and that he is not authorized to pay interest on money borrowed to go into this business."

The bill thereupon passed the House, and on February 6, 1929, after a discussion which likewise made it clear that the purpose of the Act was to have the courts pass on the questions of law, the Senate agreed to concur in the House amendment.

Thus when Congress passed this latest Act, that of 1929, it was its express intention to take away from the Secretary his discretion to decide that under the law claimants who paid and agreed to pay interest could not recover, and to leave the decision of this question to the courts. In view of the fact that previous decisions of the courts had been favorable to the claimants on this question and that the decisions of the Secretary had been unfavorable, the only possible conclusion is that Congress disapproved of the

Secretary's decisions and wanted those of the courts to be reinstated as controlling. If Congress had amended the War Minerals Act expressly to provide for the recovery of such claims, its intent would not have been more apparent.